

§ 1952.373 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall* compliance staffing levels (benchmarks) necessary for a “fully effective” enforcement program were required to be established for each State operating an approved State plan. In September 1984 Virginia, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

[51 FR 2489, Jan. 17, 1986]

§ 1952.374 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the “fully effective” compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Virginia State plan for a period of at least one year following certification of completion of developmental steps (49 FR 33123). Based on the 18(e) Evaluation Report for the period of January 1, 1987 through March 31, 1988, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Virginia’s occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Virginia plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective November 30, 1988.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Virginia. The plan does not cover private sector maritime employment; worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(c) Virginia is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[53 FR 48258, Nov. 30, 1988, as amended at 65 FR 36630, June 9, 2000]

§ 1952.375 Level of Federal Enforcement.

(a) As a result of the Assistant Secretary’s determination granting final approval to the Virginia plan under section 18(e) of the Act, effective November 30, 1988, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Virginia plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil